

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 492**

Introduced by Kremer, 34

Read first time January 14, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 25-1093 and  
2 88-547, Reissue Revised Statutes of Nebraska, and  
3 sections 88-525 and 88-527, Revised Statutes Supplement,  
4 2004; to change and provide provisions of the Grain  
5 Warehouse Act; to harmonize provisions; and to repeal the  
6 original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 25-1093, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           25-1093. The plaintiff in an action to recover the  
4 possession of specific personal property may, at the commencement  
5 of the suit, or any time before answer, request the delivery of  
6 such property as provided by sections 25-1093 to 25-1098,  
7 25-10,109, and 25-10,110. In a replevin action under the Grain  
8 Warehouse Act, notice shall be given as provided in section 4 of  
9 this act.

10          Sec 2. Section 88-525, Revised Statutes Supplement,  
11 2004, is amended to read:

12          88-525. Sections 88-525 to 88-552 and sections 3 and 4  
13 of this act shall be known and may be cited as the Grain Warehouse  
14 Act.

15          Sec. 3. (1) Whenever any grain is physically deposited  
16 into any public warehouse and a scale ticket or warehouse receipt  
17 is issued therefor, such deposit shall be grain in storage. Such  
18 deposit does not constitute a sale of the grain, except grain  
19 deposited by priced scale ticket or signed contract passing title  
20 to the warehouse licensee.

21          (2) Upon the commission's closure of a warehouse and  
22 taking title to grain within the warehouse pursuant to section  
23 88-547, grain contained in a warehouse, including grain owned by  
24 the warehouse licensee, is subject to a first priority lien in  
25 favor of valid owners, depositors, or storers of grain who are  
26 holders of evidence of ownership of grain. The lien created under  
27 this section shall be preferred to any lien or security interest in  
28 favor of any creditor of the warehouse licensee regardless of the

1 time when the creditor's lien or security interest attached to the  
2 grain. Notice of the lien created under this section need not be  
3 filed in order to perfect the lien. All the grain in the  
4 warehouse, whether stored or not, first shall be applied at all  
5 times to the satisfaction of all valid owners, depositors, or  
6 storsers of grain who hold evidence of ownership of grain.

7 (3) In the event no distribution is made pursuant to  
8 subdivision (1) of section 88-547 and the commission transfers  
9 title to the grain back to the warehouse or to another person, then  
10 the first priority lien created under section 2 of this act shall  
11 terminate. Nothing in this section shall affect any other rights,  
12 including rights of ownership in grain stored at the warehouse, of  
13 valid owners, depositors, or storsers of grain who are holders of  
14 evidence of ownership of grain. Nothing in this section shall  
15 prevent the commission from subsequently closing the warehouse and  
16 taking other action pursuant to section 88-547.

17 Sec. 4. Prior to or within ten days after any creditor  
18 of the warehouse licensee commences a judicial proceeding to reduce  
19 to judgment, foreclose, or otherwise enforce any claim on a  
20 creditor's lien or security interest attached to grain contained in  
21 the warehouse, the creditor shall serve written notice on the  
22 executive director of the commission.

23 Sec. 5. Section 88-527, Revised Statutes Supplement,  
24 2004, is amended to read:

25 88-527. (1) No person shall operate a warehouse nor act  
26 as a warehouseman without a license issued pursuant to the Grain  
27 Warehouse Act. Warehouses, except warehouses which are licensed  
28 under the United States Warehouse Act, shall be licensed and

1 regulated by the commission. If the applicant is an individual,  
2 the application shall include the applicant's social security  
3 number. Such warehouses shall be inspected by the commission at  
4 least once every twelve months.

5 (2) If the commission determines that additional  
6 examinations are necessary after a regular examination is completed  
7 at a warehouse, the commission may charge such warehouse for the  
8 cost of the additional examinations according to the commission's  
9 fee schedule. Warehouses shall only be charged if such  
10 examinations are for reasons of irregularities from the previous  
11 examination or if financial conditions warrant additional  
12 examinations.

13 (3) The commission may make available to the United  
14 States Government or any of its agencies, including the Commodity  
15 Credit Corporation, the results of inspections made and inspection  
16 reports submitted by employees of the commission upon payment of  
17 such fees as may be determined by the commission. The fees shall  
18 cover the actual cost of the services rendered in regard to  
19 providing the information.

20 (4) The commission may charge for inspections conducted  
21 at the request of a warehouse licensee.

22 (5) The commission may assess a surveillance fee against  
23 the assets of a warehouse licensee for actual expenses incurred by  
24 the commission in suspending a license or terminating the  
25 operations of a warehouse licensee. The commission may enter into  
26 contracts for such purpose and shall keep a record of all  
27 surveillance fees collected. All surveillance fees collected by  
28 the commission shall be ~~deposited in~~ remitted to the State

1 Treasurer for credit to the Nebraska Grain Warehouse Surveillance  
2 Cash Fund.

3 ~~(5)~~ (6) The commission may enter into agreements and  
4 contracts with regulators in states which border Nebraska for the  
5 purpose of licensing or examining any public grain warehouseman  
6 which operates facilities in such states. The commission shall  
7 assume all jurisdiction over any warehouseman headquartered in  
8 Nebraska regarding his or her warehouse activity. A warehouseman  
9 headquartered and licensed in another state which acquires  
10 facilities in Nebraska is under the jurisdiction of the headquarter  
11 state under the terms of such agreement or contract.

12 Sec. 6. Section 88-547, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 88-547. If the commission determines that a shortage of  
15 grain exists or that the quality of grain in storage is  
16 insufficient to meet the obligations at a warehouse, if a license  
17 expires and is not renewed, if a license is surrendered to or  
18 canceled or revoked by the commission for violation of any statute  
19 or rule or regulation adopted and promulgated by the commission, or  
20 if a warehouse is operated without a license, the commission may  
21 close the warehouse and do one or more of the following:

22 (1) Take title to all grain stored in the warehouse at  
23 that time in trust for distribution on a pro rata basis to all  
24 valid owners, depositors, or storers of grain who are holders of  
25 evidence of ownership of grain. No claim of the licensee for grain  
26 stored shall be honored until the claims of all other owners,  
27 depositors, and storers have been paid in full. Such distribution  
28 may be made in grain or in proceeds from the sale of grain. If the

1 commission closes the warehouse and takes title to the grain, such  
2 action shall operate as a stay of the commencement or continuation,  
3 including the issuance or employment of process, of any judicial,  
4 administrative, or other action or proceeding to take title to the  
5 grain that was or could have been commenced before such action by  
6 the commission;

7           (2) After notice and hearing (a) determine the value of  
8 the shortage and the pro rata loss to each owner, depositor, or  
9 storer of grain, (b) require all or part of the warehouse security  
10 to be forfeited to the commission, and (c) distribute the security  
11 proceeds on such pro rata basis; or

12           (3) Commence a suit in district court for the benefit of  
13 owners, depositors, or storers of grain.

14           The commission may deposit the proceeds from the security  
15 forfeiture under subdivision (2) of this section or the sale of  
16 grain under subdivision (1) of this section in an interest-bearing  
17 trust account for the benefit of the valid owners, depositors, or  
18 storers of grain pending final determination of the valid owners,  
19 depositors, or storers and distribution of such proceeds.

20           Sec. 7. Original sections 25-1093 and 88-547, Reissue  
21 Revised Statutes of Nebraska, and sections 88-525 and 88-527,  
22 Revised Statutes Supplement, 2004, are repealed.